

Remarks

The various parts of the Office Action (and other matters, if any) are discussed below under appropriate headings.

Claim Rejections - 35 USC § 102 and § 103

Independent claim 1, which has been amended for clarity and to more clearly define over the art relied on by the Examiner, recites a method for imaging an object that includes, *inter alia*, providing a first lens component with positive focal power after the transverse scanning surface and providing a second lens component with positive focal power after the first lens component, wherein the first lens component and the second lens component are positioned to provide a constant propagation time for the low coherence optical radiation propagating from a given point of the transverse scanning surface to a corresponding conjugate point of the an image plane within the field of vision, thereby eliminating the transverse scanning related aberration of the optical path length for the low coherence optical radiation directed towards the object.

Swanson has not been found to disclose, in a manner like that recited in claim 1, a method of imaging an object that includes, *inter alia*, providing first and second lens components, wherein the first lens component and the second lens component are positioned to provide a constant propagation time for the low coherence optical radiation propagating from a given point of the transverse scanning surface to a corresponding conjugate point of the an image plane. While the Office Action asserts that Swanson implies such a method, this interpretation is unsupported by Swanson.

In fact, Swanson has not been found to be at all concerned with imaging a flat object. Further, Swanson has not been found to make any mention of positioning a pair of lenses to provide a constant propagation time for the low coherence optical radiation propagating from a given point of the transverse scanning surface to a corresponding conjugate point of the an image plane. In FIG. 4B, Swanson describes a probe that includes lens (109) that is movable longitudinally – not a pair of lenses positioned to provide a constant propagation time.

At page 5, the Office Action turns to Fercher to cure the deficiencies of Swanson with respect to claim 1. It is respectfully submitted that this rejection should be withdrawn for at least two reasons. First, the Office Action fails to provide a reasonable

basis why the skilled person would turn to Fercher to supplement the disclosure of Swanson. As noted above, Swanson makes no mention of imaging a flat object, let alone, problems encountered with imaging a flat object. As such, Swanson does not present any problem that would lead the skilled person to consult Fercher.

Further, even if the skilled person did consult Fercher, Fercher has been found to disclose a method different from that recited in claim 1. While Fercher appears to discuss an OCT device for imaging planar surfaces in which planar object surfaces can be scanned without changes in the optical path length of the measurement beam, Fercher discloses the use of a pair of scanning mirrors (7') and (7''). It is unclear from the Office Action why a skilled person would look to Fercher to remedy a problem not suggested by Swanson. Further, if the skilled person did look to Fercher, Fercher has not been found to make any mention of the claimed positioning of first and second lenses because Fercher has not been found to make use of first and second lenses in a manner like that recited in claim 1.

For at least these reasons, the rejection of claim 1 should be withdrawn.

Claims 36 and 49 recite an apparatus for imaging an object and a delivering device, respectively, including an optical system that comprises at least a second lens component with positive focal power after the first lens component, wherein the first lens component and second lens component are positioned to provide a constant propagation time for the low coherence optical radiation propagating from a given point of the transverse scanning surface to a corresponding conjugate point of an image plane, thereby is designed having a quality of eliminating the transverse scanning related aberration of the optical length of the measuring arm.

As discussed above with respect to claim 1, Swanson has not been found to disclose, in a manner like that recited in claim 36 or claim 49, a system including a first lens component and second lens component that are positioned to provide a constant propagation time for the low coherence optical radiation propagating from a given point of the transverse scanning surface to a corresponding conjugate point of an image plane, thereby is designed having a quality of eliminating the transverse scanning related aberration of the optical length of the measuring arm.

Also, as noted above with respect to claim 1, It is unclear from the Office Action why a skilled person would look to Fercher to remedy a problem not suggested by Swanson. Further, if the skilled person did look to Fercher, Fercher has not been found

to make any mention of the claimed positioning of first and second lenses because Fercher has not been found to make use of first and second lenses in a manner like that recited in claim 36 and claim 49.

“Configured to”

In rejecting claims 36 and 49, the Examiner seems to disregard the structure introduced with the term “configured to.” It is noted that “configured to” should be construed as indicating sufficient structure to be given patentable weight. While the Examiner notes *In re Hutchinson* on page 9 of the Office Action, this case is taken out of context. A closer reading of *In re Hutchinson* reveals that **the phrase using “adapted to” was found in the preamble of the claim**, which is why the court characterized it as not constituting a limitation. **In seeming recognition of the frequent misapplication of *In re Hutchinson*, it is noted that the latest version of the MPEP no longer includes reference to *In re Hutchinson*.**

For at least these reasons, the rejections of claim 36 and claim 49 should be withdrawn.

The dependent claims, while reciting further features, are not being independently discussed in as much as they are allowable for at least the same reasons as the independent claims from which they depend. This absence of any comment regarding the dependent claims, however, should not be construed as an acquiescence to the contentions made in the Office Action.

Telephone Interview

If it is determined that the application is not in condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

Conclusion

In view of the foregoing, request is made for timely issuance of a notice of allowance.

Respectfully submitted,

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